



18

Export of Goods, Services and Export Incentives

18.1 Introduction

The export of goods and services always receive special treatment in any taxation. It is the endeavour of the Government to ensure that the exports are made duty/tax free. The Government therefore provides different types of incentives and lays down the procedures for refunding back the duty which have been levied on the input, input services used in manufacture of goods or providing output service or rebate of duty paid on goods or services. The permission to procure the inputs without payment of duty under Notification No. 43/2001-CE, permitting rebate of duty paid on the goods, permitting rebate of duty paid on the inputs, etc. under the Central Excise Act, 1944 are part of the incentives to achieve the objective of making the export duty free. Similarly, under service tax, refund of Cenvat Credit on input service is granted. Similarly, under the Customs Act, 1962, the Government grants duty drawback on export of goods. The Export and Import policy also makes provision for permitting import of goods without payment of duty for use in export product.

The definition of 'export of goods' and services are discussed in this Chapter. The procedure currently being followed for export of goods and claiming of incentives under the Central Excise Act, 1944 and Chapter V of the Finance Act, 1994 are also described in this Chapter for information.

The definition of export of goods and export of services, procedure for export of goods, claiming of rebate for export of goods and services, refund of accumulated credit, manner of declaration in the return, utilization of script granted under export/import policy and other related issues are discussed in this Chapter.

18.2 Contents of the Chapter

- (a) Statutory Provisions (**refer para 18.3**)
- (b) Zero rated supply (**refer para 18.4**)
- (c) Analysis of export of goods (**refer para 18.5**)
- (d) Analysis of export of services (**refer para 18.6**)
- (e) Inter-State Supply (**refer para 18.7**)
- (f) Procedure for export of goods and services (**refer para 18.8**)
- (g) Refund of accumulated credit (**refer para 18.9**)
- (h) Export Rebate/Refund (**refer para 18.10**)
- (i) Expediting refund (**refer para 18.10A**)
- (j) Declaration in return (**refer para 18.11**)
- (k) Beneficial Interpretation of export provision (**refer para 18.12**)
- (l) Export Incentives (**refer para 18.13**)

18.3 Statutory Provisions

The sub-sections (5) & (6) of section 2 of IGST Act defines 'export of goods' and 'export of services' respectively. The provisions are reproduced below:

- (5) "export of goods" with its grammatical variations and cognate expressions, means taking out of India to a place outside India;
- (6) "export of service" means supply of any service when—
 - (i) the supplier of service is located in India [Refer **para 18.6-1(i)**]
 - (ii) the recipient of service is located outside India [Refer **para 18.6-1(ii)**]
 - (iii) the place of supply of service is outside India [Refer **para 18.6-1(iii)**]
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange, and [Refer **para 18.6-1(iv)**]
 - (v) the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8 [Refer **para 18.6-1(v)**]

18.4 Zero-rated supply

The zero-rated supply has been defined in Section 2(23) of the IGST Act, which is reproduced below:

- (23) "zero-rated supply" shall have the meaning assigned to it in section 16;

Therefore, meaning as given in Section 16 of IGST Act is relevant. Sub-section 16(1) defines zero-rated supply as follows:

“zero-rated supply” means any of the following supplies of goods or services, or both namely—

- (a) export of goods or services; or both or;
- (b) supply of goods or services or both to a Special Economic Zones (SEZ) developer or an SEZ unit.

Thus, export of goods/services and supplies to SEZ developer or an SEZ unit are considered as zero-rated supply. The meaning of export of goods and export of services are discussed in **paras 18.5 and 18.6** respectively.

18.4-1 Input tax credit allowed

Sub-section 16(2) of IGST Act provides that credit of input tax shall be allowed even when no tax is paid at the time of clearance for export of goods or services and supply of goods or services to SEZ. Thus, even if goods are exported/substantiate under bond, the input tax credit on input/input services shall be allowed.

18.4-1a CREDIT PERMITTED EVEN IF EXEMPT SUPPLY - Sub-section 16(2) of the IGST Act further provides that the credit of input tax shall also be allowed even if such supply exempt supply. Exempt supply is defined in section 2(47) of GST Act.

(47) “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

It thus includes the supply of following type of goods and services:

- (a) Non-taxable supply;
- (b) Supply attracting nil rate of tax;
- (c) Supplies exempt under Section 11 of the GST Act excluding IGST and under Section 6 of the IGST Act.

As per section 16(2) the input tax credit will be permitted for export of such goods/services or supplies to SEZ.

18.4-1b PROVISION UNDER CENVAT CREDIT RULES, 2004 - The similar provisions of permitting the credit even if the goods are cleared for export without payment of tax or under exemption is provided in rule 6(6) of Cenvat Credit Rules, 2004. The same are discussed below:

The Rule 6(1) of the Cenvat Credit Rules, 2004 provides that the manufacturer or the provider of output service will not be entitled to claim the credit of inputs or input services which are used for the

manufacture of exempted goods or providing of exempted services. However, rule 6(6) itself allows the credit to the extent attributable to use of inputs and input services in specified exempted goods or for providing exempted services. The Rule 6(6) of the Cenvat Credit Rules, 2004 provides that the provisions of rule 6(1) to 6(4) will not be applicable for the following supplies made:

- “(i) Cleared to a unit in a special economic zone or to a developer of a special economic zone for their authorized operations; or
- (ii) Cleared to a hundred per cent export oriented undertaking; or
- (iii) Cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or
- (iv) Supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95-CE, dated 28/08/1995, number G.S.R. 602(E), dated 28/08/1995; or
- (v) Supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of Notification No. 12/2012-CE dated 17/03/2012, number G.S.R. 163(E), dated 17/03/2012; or
- (vi) Cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or
- (vii) Gold or silver falling under Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or [zinc by smelting; or]
- (viii) All goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied:—
 - (a) Against International Competitive Bidding; or
 - (b) To a power project from which power supply has been tied up through tariff based competitive bidding; or
 - (c) To a power project awarded to a developer through tariff based competitive bidding;

In terms of Notification No. 12/2012-CE, dated 17/03/2012.

- (ix) Supplies made for setting up of a solar power generation projects or facilities;
- (x) Ethanol produced from molasses generated from cane crushed in the sugar season 2015-16 *i.e.* 1/10/2015 onwards, for supply to the

public-sector oil marketing companies, namely, *Indian Oil Corporation Ltd.*, *Hindustan Petroleum Corporation Ltd.* or *Bharat Petroleum Corporation Ltd.*, for the purposes of blending with petrol, in terms of the provisions of S.No. 40A of the Table in Notification No. 12/2012-CE dated 17/03/2012, number G.S.R. 163(E), dated 17/03/2012."

The above list of supplies *inter alia* includes export of goods which have been specifically indicated as a zero-rated supply in the definition given in Section 2(23) of the IGST Act. But all other supplies mentioned above can be considered as a zero-rated supply. It may be mentioned that provisions of Rule 6(6) of the Cenvat Credit Rules, 2004 will not be applicable under GST Act, but it is expected that similar provisions will be made in the Input Tax Credit Rules, under GST to list certain supplies on which no tax will be payable, but the credit of inputs or input services will be available. Such supplies will be considered as a zero-rated supply.

18.5 Analysis of 'Export of Goods'

The definition of export of goods is reproduced above. The definition can be analysed by understanding the meaning of goods and meaning of India. These are discussed below:

18.5-1 Meaning of Goods

The meaning of goods has been discussed in **Chapter 4 para 4.13-1**. As per the definition of service given in section 2(102) of the Act, service means anything other than goods, money and securities. Sub-section 7(1)(d) of GST Act empowers the government to specify the transaction as supply of goods or supply of services. Schedule II lists the transaction as transaction in goods or transaction in services. Further, the paragraph 5(c) and paragraph 5(d) of Schedule II specifies following transaction as transaction in service.

- “(c) Temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software.”

Thus, these activities will be considered as services. There are many companies who export computer software regularly. If they are exported through internet it will be considered as services. However, if they are exported by incorporating software in any medium they are considered as export of goods. But now because of provisions contained in paragraph 5(c) and 5(d) of Schedule II, these items of export will be considered as 'export of service' and not 'export of goods' under Goods

and Services Tax Act. But they will be considered as export of goods for custom purpose and documents like shipping bill, etc. shall be prepared by the exporter.

The implication of considering these items as export of service will be only known when the incentives provided to export of goods or services are notified.

18.5-2 Meaning of India

India is defined in section 2(56) of the GST Act. The meaning of it is elaborated in **Chapter 4 para 4.10-3a**. Normally the meaning of India is the land mass of the country and seashore extending upto twelve nautical miles from the land mass of the country. However, the definition given in section 2(56) of the GST Act extends the meaning to not only territorial waters but also continental shelf, exclusive economic zone or maritime zone (hereinafter in this Chapter referred to as specified territory). Therefore, goods can be considered as export only when the ship carrying the goods has crossed the specified territory. The goods can be said to be taken out of India only when the vessel carrying the goods has crossed the specified territory. Similarly, if the goods are exported by aircraft, the aircraft shall cross the air space above the land mass of the country as well as air space of the specified territory in sea. The same is considered as export of goods.

Receipt of foreign exchange is not essential - The definition of export of goods only provides that the goods shall be taken out of India. It nowhere provides that the exporter must receive the amount in foreign currency for the goods taken out of the country. Thus if the exporter has not received the amount in foreign currency, yet the goods for the purpose of GST will be considered as exported under GST Act.

18.6 Analysis of Export of Services

The conditions stipulated in section 2(6) of IGST Act shall be complied with in order to consider any service as export of service. The definition of service is reproduced in **para 18.3**. The analysis of each of the condition is given below:

18.6-1 Location of the Supplier

The first condition is that the supplier shall be located in India. India has been defined in section 2(56) of the GST Act. The meaning of India has been discussed in **Chapter 4 para 4.10-3a**. It includes not only the